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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Section 273(d)(5)	)	
of the Communications Act of 1934,	)	GC Docket No. 96-42
as amended by the Telecommunications	)	
Act of 1996 -- Dispute Resolution	)	
Regarding Equipment Standards	)	

COMMENTS OF BELLSOUTH CORPORATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

BellSouth Corporation and BellSouth Telecommunications, Inc., ("BellSouth") hereby submit their comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-referenced proceeding.[1] Section 273(d)(5) of the Telecommunications Act requires the Commission to adopt an alternate dispute resolution process to be used in limited situations involving disputes between a Non-Accredited Standards Development Organization ("NASDO") and a funding party for a specific project. To meet the requirements of the Act the Commission has proposed a binding arbitration procedure. In addition, the Commission has solicited

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[1] Notice of Proposed Rulemaking, GC Docket No. 96-42, In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards, FCC 96-87, released March 5, 1996, 61 Fed. Reg. 9966 (March 12, 1996).

comments regarding the appropriate procedures to be used in the process and the potential use of Commission personnel as arbitrators.

I. INTRODUCTION

In addition to addressing the dispute resolution procedure set forth in the Commission's NPRM, BellSouth will also discuss the proposal set forth by Corning in its response to the NPRM.[2] In summary, BellSouth believes that the binding arbitration process outlined in the NPRM is inappropriate in this context and could result in decisions that are not in the best interests of either the funding parties or the telecommunications industry. In addition, unlike Corning's proposal, the dispute resolution process adopted by the Commission should involve the funding parties and ensure a final decision.

II. COMMISSION'S BINDING ARBITRATION PROPOSAL

BellSouth believes that the binding arbitration procedure proposed by the Commission is too narrowly focused and does not adequately address the interests of all funding parties. Corning in its comments points out several other weaknesses in the procedure proposed in the NPRM.[3] Most importantly, while binding arbitration is an established means to settle disputes between two parties, it is inappropriate when the issue to be decided could have a lasting impact on numerous entities who were not part of the arbitration proceeding. In addition, the legalistic setting of an arbitration proceeding

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[2] Comments of Corning Incorporated in Response to Notice of Proposed Rulemaking, March 21, 1996. ("Corning Comments")

[3] See Corning Comments, pp. 5-7.

makes it an ineffective venue to resolve complex technical design issues typically raised in the standard setting process. Decisions involving these types of issues should be made by technical personnel with experience in the specific project area. It would be extremely difficult to find an arbitrator who is both a disinterested neutral and an expert able to understand what are likely to be very complex technical issues.[4] Moreover, it would be extremely difficult to locate, decide on, and educate an arbitrator within the time frame set forth in the Act. For these reasons BellSouth believes that the binding arbitration process proposed in the NPRM should not be adopted.

III. BELLSOUTH COMMENTS ON THE CORNING PROPOSAL

BellSouth believes that the Corning proposal, although recognizing the drawbacks of the proposal in the NPRM, focuses the decision making authority of its mediation process in the wrong place. Under the Corning proposal the decision would be made by a group that has not participated in funding the project and has no need to have the dispute resolved[5]. Corning proposes that disputes be referred to "SDOs that are accredited by ANSI."[6] To begin with, there is no assurance that such body would be

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4 Similarly, the Commission's offer of staff personnel who have expertise in the area of dispute resolution, but who probably do not have the needed technical expertise would not improve the process proposed by the Commission. More fundamentally, the Act appears to preclude participation by the Commission. See §273(d)(5) ("The Commission shall not establish itself as a party to the dispute resolution process.")

5 In fact Corning's proposal would appear to mandate exclusion of the Non-Accredited Standards Development Organization and its affiliates from the mediation process. In the case of BellCore, the most visible NASDO, this would mean that BellCore and the BOCs would be excluded from the process, even though they may play a major role in funding the work and be most affected by any dispute resolution. See Corning Comments, p. 8 note 11. It is clearly inappropriate to exclude those parties who are most likely to be interested in the result from the process.

6 Corning Comments, p. 8.

neutral or would give full consideration to the needs of the carriers that would be affected by the decision. In addition, the appropriate SDO, if there is one with expertise in the specific area at issue, may not have the procedures and framework in place to enable it to reach a decision within the statutory time frame. Moreover, there is more than a minimal possibility that the process advocated by Corning may not result in a final decision.

IV. BELLSOUTH PROPOSAL

The dispute resolution requirements of the Act only apply if the NASDO and funding parties on their own cannot agree on a dispute resolution procedure. In most instances, agreement on the dispute resolution process should occur as part of the process of a party's deciding to participate in and fund the project. The Act makes it clear[7] that only parties that fund the project at issue can raise a dispute that would call into play the dispute resolution process required by the Act. Consistent with the Act, this process would apply to a dispute between any NASDO and a funding party. BellSouth believes that whatever dispute resolution mechanism is selected, the funding parties should have a voice in the final decision. The funding parties, because they are the most directly interested, should not be excluded from the process. As the Conference Report quoted by the Commission stated, the purpose of this provision is to "enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness, and technical quality of the activity."[8]

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7 Sections 273(d)(4)(A) and 273(d)(5).

8 H.R. Conf. Rep. No. 230, 104th Cong. 2d Sess. 39 (1996).

BellSouth proposes that a broad mediation process, not based on a binding decision by a single arbitrator, should be adopted. This mediation process should result in a decision that can be presented to the NASDO and the party raising the dispute, either of which could accept or reject the finding. However, a mechanism which includes the remaining funding parties should be developed to essentially ensure that a final decision is reached.

V. DEFINITION OF FRIVOLOUS DISPUTE

BellSouth believes that the definition of "frivolous" proposed by Corning has some merit, but is overly complicated. Corning proposes a two pronged test: a challenge would not be frivolous if there is some "legitimate basis for challenging the NASDO's determination" at issue and if the process was not invoked "solely for purposes of delay."[9] BellSouth believes that only the first part of the standard is necessary, i.e., a complaint would not be frivolous if there was a legitimate basis for challenging the particular decision of the NASDO. Including "solely for purposes of delay" as part of the standard seems to imply that a challenge that was found not to be legitimate would still not be considered frivolous so long as it was not brought solely for delay. If no legitimate basis exists, it should not matter whether the challenge was brought solely for delay. In other words, if there is no legitimate basis, the motive of the entity bringing the challenge should be irrelevant. Therefore, BellSouth proposes that a challenge be found frivolous if it is determined that there was no legitimate basis for the challenge.

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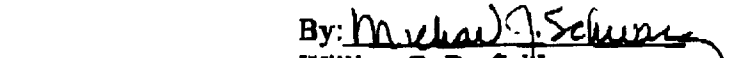
[9] Corning Comments p. 13

VI. CONCLUSION

BellSouth believes that a dispute resolution process involving the funding parties will best serve the purposes of the Communications Act and lead to technically efficient and appropriate decisions for the entire industry.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS

By: 
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